

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 801 of 1985

with

CRIMINAL APPEAL No 802 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and
MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy
of the judgement?

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
(No. 1 to 5 NO)

USHABEN D/O CHELABHAI PADHIAR W/O JAYENDRAKUMAR @ MAHENDRA

Versus

JAYENDRAKUMAR @ MAHENDRAKUMAR PADHIAR

Appearance:

1. Criminal Appeal No. 801 of 1985

MR AKSHAY H MEHTA for Petitioner

MS KUSUM M SHAH for Respondent No. 1 & 2

MR. K.C. SHAH, LD. PUBLIC PROSECUTOR for Respondent No. 3

2. Criminal Appeal No 802 of 1985

MR AKSHAY H MEHTA for Petitioner

MR SV RAJU for Respondent No. 1

MR. K.C. SHAH, LD. PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

Date of decision: 27/08/97

ORAL JUDGEMENT

Per: S.D. Dave, J :-

The present orders shall govern the disposal of these two Criminal Appeals filed by the Appellant Ushaben Padhiar, who happens to be the original complainant.

The accused persons came to be convicted for the alleged commission of the offence punishable under section 494 r/w section 109 I.P.Code. The Respondents in Criminal Appeal No. 801 of 1985 came to be convicted for the above said offence and each of them came to be sentenced to the S.I. for six months, and to a fine of Rs.500-00, in default to the further S.I. for one month; under the orders pronounced by the Ld. JMFC, Dhanera, in Criminal Case No. 146 of 1982 dated December 17, 1983. But the Respondents accused No.1 & 2 came to be acquitted in Criminal Appeal No. 9 of 1984 under the orders of the Ld. Addl. Sessions Judge, Palanpur, dated 30th November, 1984. The Criminal Appeal No. 801 of 1985 has been directed against the above said orders of acquittal pronounced by the Appellate Court.

The Criminal Appeal No. 802 of 1985 has been filed by Ushaben Padhiar, the original complainant. The Respondent no.1 Shantaben Mali came to be convicted for the alleged commission of the offence punishable under section 494 r/w section 109 I.P.Code by the Ld. JMFC Dhanera in C.C. No. 146 of 1982 dated December 17, 1983. She was sentenced to the S.I. for six months and to a fine of Rs.500-00, in default to the further S.I. for one month. But the Criminal Appeal No. 10 of 1984 filed by Respondent Shantaben Mali came to be allowed by the Addl. Sessions Judge, Palanpur, under the orders dated 30th November, 1984. The Appellant original complainant therefore has filed Criminal Appeal No. 802 of 1985.

While allowing the above said both the Appeals, Ld. Addl. Sessions Judge has come to the conclusion that, the evidence brought on record by the prosecution was falling short of establishing a second marriage between Jayendrakumar and Shantaben. Upon the reading of the evidence as a whole, we are satisfied that the view taken by the Ld. Addl. Sessions Judge appears to be in

consonance with the facts of the case and the legal position. In our opinion, the evidence led in by the prosecution falls short of establishing the so called second marriage between Jayendrakumar & Shantaben.

When the evidence of Ushaben, the complainant PW-1, Exhibit-12 is referred, it is clear that she has no personal knowledge regarding the so called second marriage between her husband Jayendrakumar and accused no.2 Shantaben. Her say is that, her husband and the accused no.2 Shantaben had visited the house of one Hansaben at Palanpur, and at that time they had the garlands. This evidence tendered by Ushaben would go to show that, she has no personal knowledge and that she was not present at the house of Hansaben. But her say is based upon certain information which she had received from others, including the village people. Jethabhai the brother of the accused no.2 Shantaben, who came to be examined as PW-2, Exhibit-14 has stated that, there was a proposal of a marriage between his sister Shantaben with the accused no.1 Jayendrakumar but he had not liked the same. According to him, later on he had left the house, but had learnt from other people that ultimately the marriage between Mahendrakumar the accused no.1 and Shantaben the accused no.2 was performed. This evidence would go to show that, this witness also has no personal knowledge regarding the actual performance of the so called second marriage. The same would be the position in respect of the evidence tendered by PW-3 Devchandbhai, Exhibit-16. According to him, priest Narberam had told him regarding the second so called marriage. It requires to be appreciated that Narberam happen to the accused no.4 and therefore his evidence was not available to the prosecution. Any how, the fact remains that the evidence of Devchand would only go to show that, he had received some information from Narberam regarding the second marriage. This witness also had no personal knowledge regarding the performance of second marriage. PW-4 Devaji, Exhibit-62, also does not lend any support to the case of the prosecution by his evidence, though he speaks of some marriage formalities. He has also said that he does not remember the day or the date on which the second marriage came to be performed. He has also stated that, so many people were present on the occasion but he does not know them and he does not remember their names. The evidence of Maganbhai, PW-5 Exhibit-63 is only to the effect that, he had seen accused no.2 Shantaben residing in the house of the father of the accused no.1. This witness also does not say anything regarding the actual performance of the so called second marriage. The evidence of PW-6 Devchand at Exhibit-64 is also equally

unsupporting. The say of the witness is that, some people had approached him by saying that the second marriage of the accused no.1 Mahendrakumar was to take place and that, he was requested to interfere, but he had directed them to see the concerned people. The evidence of this witness also therefore does not further the case of the prosecution.

The above said resume of the evidence tendered by the prosecution would go to show that the Id. Addl. Sessions Judge was perfectly justified in coming to the conclusion, that the prosecution was not able to establish the marriage of the accused no.1 Jayendrakumar with accused no.2 Shantaben, which would be punishable under section 494 I.P.Code. We do not see any justifiable reason to interfere with the above said orders of acquittal pronounced by the Appellate Court. In our opinion, the present appeals require to be dismissed. We order accordingly. Both the Appeals shall stand dismissed. The orders of acquittal rendered by the first Appellate Court are hereby upheld and confirmed.

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